

1 HOUSE BILL 195

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Bill McCamley

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9  
10 AN ACT

11 RELATING TO STATE INVESTMENTS; REQUIRING REPORTING ON  
12 ALTERNATIVE INVESTMENTS MADE BY THE EDUCATIONAL RETIREMENT  
13 BOARD, THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION AND THE  
14 STATE INVESTMENT COUNCIL.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. [NEW MATERIAL] STATE INVESTMENTS--ALTERNATIVE  
18 INVESTMENTS--REPORTING.--

19 A. Once annually, an alternative investment manager  
20 that receives capital commitments for an alternative investment  
21 vehicle from a fund managed by an investing agency shall report  
22 to the state treasurer the following information, compiled in  
23 an electronic spreadsheet format and as prescribed by the state  
24 treasurer:

25 (1) the management fees and expenses paid by

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1 investors to the alternative investment vehicle, the  
2 alternative investment manager or a related party;

3 (2) the fees and expenses, including  
4 partnership expenses, not included in Paragraph (1) of this  
5 subsection that are paid by the alternative investment vehicle  
6 to the alternative investment manager or a related party;

7 (3) the carried interest or incentive  
8 allocation distributed to an alternative investment manager or  
9 related parties;

10 (4) the aggregate fees and expenses incurred  
11 by all the portfolio holdings held within the alternative  
12 investment vehicle that are paid to the alternative investment  
13 manager or related parties;

14 (5) the amount of all management fee waivers  
15 and offsets made by the alternative investment vehicle  
16 alternative investment manager or general partners;

17 (6) amounts paid in indemnification by the  
18 alternative investment vehicle and amounts deducted from  
19 payments owed by the alternative investment manager relating to  
20 indemnification;

21 (7) the gross rate of return and net rate of  
22 return of each alternative investment vehicle for the preceding  
23 one-, five- and ten-year periods, as applicable, and for the  
24 period since inception; return calculations shall disclose the  
25 use of subscription line financing, if applicable, and reflect

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1 the amount of returns had subscription line financing not been  
2 used; and

3 (8) the amount of compensation, including  
4 annual salary, carried interest and other compensation required  
5 by item 402(b) of federal securities and exchange commission  
6 regulation S-K to be reported, of the alternative investment  
7 manager's principal executive officer, principal financial  
8 officer and three most-highly compensated executive officers.

9 B. Subsection A of this section applies to all  
10 agreements an investing agency enters into on or after July 1,  
11 2018, to all existing agreements in accordance with which an  
12 investing agency makes a capital commitment, amendment, renewal  
13 or extension on or after July 1, 2018 and to a subsequent  
14 agreement that implements, memorializes or provides detail  
15 about either of those types of agreements. However, for such  
16 an agreement that consists of a modification of, or amendment  
17 to, an agreement for which the disclosures required by this  
18 section have been made, an alternative investment manager may,  
19 instead of complying in full with the provisions of Subsection  
20 A of this section:

21 (1) identify the disclosures made in  
22 accordance with Subsection A of this section and disclose only  
23 the parts of the modification or amendment that modify, alter  
24 or affect the provisions previously disclosed; or

25 (2) make and disclose a finding that the

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1 modification or amendment does not modify, alter or affect the  
2 provisions previously disclosed.

3 C. Beginning on July 1, 2018, an alternative  
4 investment manager that enters into an agreement with an  
5 investing agency to invest in an alternative investment vehicle  
6 shall, within ninety days after entering into the agreement,  
7 submit a copy of the agreement to the state treasurer.

8 D. The state treasurer shall make available the  
9 information submitted in accordance with Subsections A through  
10 C of this section by:

11 (1) at least once each year presenting a  
12 report with the compiled information at a meeting open to the  
13 public; and

14 (2) posting the information as it is received  
15 on the office of the state treasurer's website and maintaining  
16 it there.

17 E. The failure of an alternative investment manager  
18 to comply with Subsections A through C of this section shall  
19 not be deemed a violation of the agreement concerning which  
20 those subsections require disclosure.

21 F. As used in this section:

22 (1) "agreement" means a binding contract,  
23 often referred to as a limited partnership agreement, that sets  
24 out the parties to the agreement and terms, including terms  
25 concerning capital contributions, indemnifications, fees,

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1 clawbacks and fee waivers; as used in this paragraph:

2 (a) "clawback" includes all clawback  
3 provisions, including provisions allowing an alternative  
4 investment manager to pay back an amount less than the full  
5 cost of an overpayment received by the manager and provisions  
6 necessary to understanding the mechanics of a clawback, and the  
7 defined terms related to or affecting the clawback provisions;

8 (b) "fee waiver" includes all management  
9 fee waiver provisions, including provisions allowing an  
10 alternative investment manager to waive fees, provisions that  
11 specify the mechanics of a fee waiver or repayment, provisions  
12 that specify the magnitude of the fee waiver and provisions  
13 necessary to understanding the mechanics of the fee waiver, and  
14 the defined terms related to or affecting the fee waiver  
15 provisions; and

16 (c) "indemnifications" includes all  
17 indemnification provisions, including provisions requiring an  
18 alternative investment vehicle or its investors to indemnify  
19 the alternative investment manager or a related person or party  
20 for settlements or judgments paid and provisions necessary to  
21 understanding the mechanics of the indemnification, and the  
22 defined terms related to or affecting the indemnification  
23 provisions;

24 (2) "alternative investment" means an  
25 investment in a private equity fund, venture fund, hedge fund,

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1 absolute return fund or investment pool that is privately  
2 organized, actively managed by investment professionals and  
3 pays performance or incentive fees to investment managers;

4 (3) "alternative investment manager" means the  
5 general partner, adviser, affiliates or other related parties:

6 (a) with decision-making authority over  
7 an alternative investment vehicle; or

8 (b) providing services to or on behalf  
9 of portfolio holdings;

10 (4) "alternative investment vehicle" means a  
11 limited partnership, limited liability company, pooled  
12 investment entity, separate account with one or more investors  
13 or entity with a legal structure similar to those through which  
14 an investing agency invests in an alternative investment to  
15 engage in strategies involving equity or debt financing of  
16 public or private companies;

17 (5) "carried interest" means a share of  
18 profits from an alternative investment vehicle, including  
19 allocations of alternative investment vehicle profits received  
20 by an alternative investment manager in consideration of having  
21 waived fees that the alternative investment manager might  
22 otherwise be entitled to receive, distributed to an alternative  
23 investment manager or general partner;

24 (6) "gross rate of return" means the internal  
25 rate of return for an alternative investment vehicle before the

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1 reduction of the fees and expenses described in Paragraph (2)  
2 of Subsection A of this section;

3 (7) "investing agency" means the educational  
4 retirement board, the public employees retirement association  
5 and the state investment council;

6 (8) "operational person" means an operational  
7 partner, senior advisor, consultant or employee of a relevant  
8 entity of whose primary activity for that relevant entity is to  
9 provide operational or back office support to a portfolio  
10 holding of an alternative investment vehicle, account or fund  
11 managed by a related person;

12 (9) "person" means an individual, corporation,  
13 partnership, limited partnership, limited liability company or  
14 association;

15 (10) "portfolio holding":

16 (a) means individual portfolio  
17 investments made by an alternative investment vehicle; and

18 (b) includes a business, partnership,  
19 real property or other type of business entity or asset in  
20 which an alternative investment vehicle has: 1) held an  
21 interest in the securities of the entity or asset; or 2) held a  
22 real property interest in, or acted as a lender to, the entity  
23 or asset;

24 (11) "related party" means:

25 (a) a related person;

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1 (b) an operational person;

2 (c) an entity more than ten percent of  
3 the ownership of which is held directly or indirectly, whether  
4 through other entities or trusts, by a related person or  
5 operational person, regardless of whether the related person or  
6 operational person participates in the carried interest  
7 received by the general partner or the special limited partner;  
8 or

9 (d) a consulting, legal or other type of  
10 service provider: 1) regularly engaged by portfolio companies  
11 of an alternative investment vehicle, account or fund managed  
12 by a related person; and 2) that provides advice or services to  
13 a related person or relevant entity;

14 (12) "related person" means:

15 (a) a current or former employee,  
16 manager or partner of a relevant entity who is involved in the  
17 investment activities or accounting and valuation functions of  
18 the relevant entity; or

19 (b) a family member of any of those  
20 people; and

21 (13) "relevant entity" means:

22 (a) the general partner, a separate  
23 carry vehicle or the investor advisor of an alternative  
24 investment vehicle, account or fund advised or managed by a  
25 current or former related person; or



1 (b) the parent, subsidiary or a similar  
2 type of entity related to such an alternative investment  
3 vehicle.

4 SECTION 2. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2018.

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